Attorney Checklist for Hearings and Trials

Table of Contents

SHELTER CARE HEARINGS

□ Standard of Proof: Probable cause. (Children services agency has a reasonable basis to believe that the child would be at imminent risk of harm if not removed from the home.)

□ Rules of Evidence: Relaxed. (The court can consider any relevant evidence including things that might normally be excluded like hearsay.)

□ Must be proven: The child is at imminent risk of harm from the child's circumstances or surroundings and removal is necessary to prevent immediate or threatened harm (either physical or emotional).

> □ Also, that agency made reasonable efforts to prevent the removal of the child from the home however, maintaining the child in the home at this time is not in the child's best interest.
>
> ***NOTE:*** If you are representing a children services agency, it is imperative that you prove that the agency made reasonable efforts to prevent removal and that the intervention is in the best interests of the child. Ask the judge to include those findings either in the ex parte order or in the entry for the shelter care hearing, If the findings are not explicitly in the entry, the child's IV-E eligibility is affected and cannot be cured by a nunc pro tunc or amended entry, although the court can make reasonable efforts findings at the dispositional hearing and "reinstate" the child's eligibility.

□ Make sure the following has occurred:

> □ Agency has filed a complaint.
>
> □ Parents have been provided notice of the date, time, and place of the hearing.
>
> □ Agency has done at minimum a cursory search for relatives or fictive kin that might be appropriate for placement.
>
> □ If possible, serve parents with the complaint and summons at this hearing.

ADJUDICATORY HEARINGS

□ Standard of Proof: Clear and convincing evidence. (More than a preponderance of the evidence, but less than proof beyond a reasonable doubt. It is evidence that produces in the mind of the trier of fact a firm belief that the facts sought to be established are true.)

□ Rules of Evidence: Strict application. Hearsay is not allowed unless it falls under a hearsay exception.

□ Must be proven: This depends on what has been alleged.

- Prior to proceeding, ensure that service has been perfected on all parties. Personal service is preferrable if possible. Service can also be perfected by certified mail service, residential service or publication. (See Civ.R. 4, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7.)

  All proper and necessary parties are entitled to service, but the child shall not be summoned unless directed by the court.

  * The summons shall require the parties to appear before the court (and shall provide the address of the court, the date and time of the hearing) at a time fixed by the court to answer the allegations of the complaint. Juv. R. 15(A); Juv. R. 16(A)

  * The summons shall contain the following:

    ~ The name of the party with whom the child is residing.

    ~ A summary statement of the complaint.

    ~ A statement that the party is entitled to be represented by an attorney and that upon request the court will appoint an attorney if the party is indigent.

    ~ An order to appear at a stated time and place with a warning that the party could lose valuable rights or be subject to court sanctions if the party fails to appear.

    ~ A statement that if the child is adjudicated abused, neglected or dependent and the complaint seeks permanent custody that an order of permanent custody would cause the party/parent to be permanently divested of all parental rights and privileges.

~ A statement that if the child is adjudicated abused, neglected, or dependent and the complaint seeks temporary custody, that an order of temporary custody will result in the child being removed from the legal custody of the parent, guardian or other custodian until the court terminates the order or terminates parents' rights.

~ A statement that if the child is adjudicated abused, neglected, or dependent and the complaint seeks a planned permanent living arrangement (PPLA), that an order of PPLA will result in the child being removed from the legal custody of the parent, guardian, or other custodian until the court terminates the order or terminates parents' rights.

~ A statement, in a removal action, of the specific disposition sought.

~ The name and telephone number of the court employee who can arrange the prompt appointment of counsel for indigent persons. Juv. R. 15(B)(1-10)

□ If parents are going to agree to adjudication, ensure that there is a dialogue between court and parents in which parents are advised of their right to counsel and trial rights and that they waive these rights on the record.

□ Establish subject matter jurisdiction and venue:

- The subject child is under the age of 18.
- The parent(s) reside in the county in which the case was filed OR
- The alleged abuse, neglect, or dependency occurred in said county.
- DEPENDENCY R.C. 2151.04 – Must prove by clear and convincing evidence that the child is dependent in one of the ways listed in the statute.
- NEGLECT R.C. 2151.03 – Must prove by clear and convincing evidence that the child was neglected in one of the ways listed in the statute. (See Appendix - Rules and Statutes for further explanation.)
- ABUSE R.C. 2151.031 Must prove by clear and convincing evidence that the child was abused in one of the ways listed in the statute. (See Appendix - Rules and Statutes for further explanation.)

NOTE: Adjudication and disposition hearings are bifurcated unless waived by the parties. The hearings must be separated by at least 24 hours. (Juv.R. 34(A))

Be aware that parents do not have an absolute right to be present at a hearing. However, there must be some way afforded to them to present testimony if they are not present. (i.e.: Counsel is appointed to represent the absent parent, parent can give a deposition, etc.)

Adjudication must be held within 30 days of the filing of the complaint, except that, for good cause shown, the court may continue the hearing for no more than 60 days after the complaint was filed. R.C. 2151.28(A)(2). Failure to hold the hearing on time may result in a due process violation.

DISPOSITIONAL HEARINGS

□ Standard of Proof: Preponderance of the evidence. (The standard of proof in most civil cases in which the party bearing the standard of proof must present evidence which is more credible and convincing than that presented by the other party, or which shows that the fact to be proven is more probable than not.)

□ Rules of Evidence: Relaxed. Any relevant evidence is admissible.

□ Must be proven: The proposed dispositional orders are in the best interest of the child.

□ Dispositional options:

1. Maintain the child in own home with protective supervision to the agency.

2. Place the child in the temporary custody of the non-removal parent, a third party or with the children services agency. (This disposition also generally includes protective supervision to the children services agency unless the child is placed in the temporary custody of the agency.)

3. Place the child in the legal custody of the non-removal parent, relative, or family friend. (This is a disposition which is intended to be permanent, until the child reaches the age of majority. It is rare as an original disposition but does happen in certain circumstances.)

4. Place the child in a planned permanent living arrangement (PPLA) with a children services agency. (This is a long-term foster care situation. Children cannot be placed in PPLA if they are under the age of 16.)

5. Place the child in the permanent custody of the children services agency. (This disposition terminates parental rights and frees the child for adoption. Again , a very rare original dispositional option but does happen at times.)

□ The agency must also present evidence or testimony regarding their efforts to prevent the continued removal of the child from the home (called reasonable efforts). If the court finds that the agency has proven reasonable efforts, the court must put a written finding in the order that the children services agency made “reasonable efforts to prevent the continued removal of the child from the home but it is not in the child’s best interest to return home at this time.” If the requested/ordered disposition is protective supervision, the court can make the finding that the agency is continuing to make reasonable efforts to prevent the removal of the child from the home.

NOTE: If permanent custody is the original dispositional prayer, the standard of proof changes to clear and convincing evidence and the Rules of Evidence are strictly applied.

Failure to get a reasonable efforts finding at the original disposition affects the children services agency's IV-E funding and cannot be cured by a nunc pro tunc or amended court order, so, it is very important that the court includes that finding.

The original adjudication and dispositional hearings must be completed no later than 90 days after the filing of the complaint, except that the court can continue the dispositional hearing for an additional 45 days for good cause. R.C. 2151.35(B)(1).

REVIEW HEARINGS

□ Standard of Proof: Preponderance of the Evidence.

□ Rules of Evidence: Relaxed.

□ Must be proven: That the child's current circumstances, placement or custody continue to be in the child's best interest and orders should remain status quo or that the orders should be changed as the party requests.

Review hearings are truly informal hearings where generally witnesses are not sworn, and all parties present that wish to do so have an opportunity to offer their thoughts to the court about the child's current circumstances. This would include how the agency or caregiver is meeting the child's basic needs, what services are currently in place or being sought by the parents and what other services the child might need.

The caseworker should also present information to the court about the parents' case plan compliance and progress towards reunification as well as information about the agency's ongoing efforts to prevent the continued placement of the child out of the home (reasonable efforts***). Although reasonable efforts findings are not required at most of the review hearings, it is wise to ask for them at every hearing to prevent the loss of IV-E eligibility. It can also be important at a future permanency hearing to show whether the agency was consistent in making reasonable efforts throughout the case.***

ANNUAL REVIEW HEARINGS

□ Standard of Proof: Depends on the motion before the court.

*Preponderance of the evidence for motions for reunification.

*Clear and convincing evidence for extensions of temporary custody (TC), planned permanent living arrangements (PPLA) and permanent custody (PC).

□ Rules of Evidence: Again, it depends on the motion before the court.

* Relaxed: Motions to extend TC, legal custody, PPLA, reunification.

* Strict Application: Permanent custody.

□ Must be Proven: See the discussions regarding individual dispositional hearings below.

NOTE: The children services agency is required to file a motion 30 days prior to the annual review (sunset) date (good practice is 30 days before the hearing) pursuant to R.C. 2151.415(A).

There must be a finding that children services made reasonable efforts to finalize a permanent plan at the first annual review and at any semi-annual reviews that occur thereafter. This does not, however, require that permanency must be achieved – just that there is an alternative plan to reunification that is occurring concurrently with working towards reunification.

Motions

MOTIONS TO EXTEND PROTECTIVE SUPERVISION

□ The agency must file a written motion to extend the protective supervision order and provide notice of the motion to the parties.

□ The court's only consideration is whether extending protective supervision is in the child's best interest.

□ If the agency fails to file a motion to extend protective supervision, the court can notify the parties that it either intends to extend the protective supervision or terminate the protective supervision on the court's own motion. Parties then have seven days to request a hearing, or the court may act without a hearing pursuant to R.C. 2151.353(H).

MOTIONS TO EXTEND TEMPORARY CUSTODY

□ The agency must prove that the child cannot and should not return home at this time and whether the child should remain the in the custody of the children services agency or another individual. (R.C. 2151.417(G)(3))

□ For the first extension of TC, the agency must prove by clear and convincing evidence that an extension of custody is in the child's best interest AND:

- There has been significant progress on the case plan and
- There is reason to believe that the child will be reunified or otherwise permanently placed within the period of extension.

□ For the second extension of TC, the agency must prove by clear and convincing evidence that a second extension of custody is in the child's best interest AND

- There has been additional substantial progress since the last period of extension and
- There is reason to believe that the child will be reunified with a parent or otherwise permanently placed before the expiration of the extension. (R.C. 2151.415(D))

NOTE: No children services agency can hold temporary custody of a child beyond two years. Permanency must be sought and achieved by the time the case has reached two years from the original filing date of the complaint.

R.C. 2151.413(D) makes it mandatory for a children services agency to seek permanent custody of a child who has been in its temporary custody for 12 out of 22 consecutive months. If the agency does not seek permanent custody, it must prove a compelling reason why permanent custody is not in the child's best interest at that time.

MOTIONS FOR LEGAL CUSTODY

□ When making custody determinations between a parent and a non-parent (relative/fictive kin) there is no requirement that the court must make a new or additional finding of unsuitability. The original adjudication of abuse, neglect, or dependency is sufficient. (R.C. 2151.353. See also, *In re C.R.,* 108 Ohio St.3d 369, 2006-Ohio-1191)

□ The court can consider best interest factors enumerated in R.C. 3109.04(F)(1):

a) The wishes of the child's parents regarding the child's care.
b) The child's wishes as expressed to the court during a hearing or in camera interview.
c) The child's interaction and interrelationship with the child's parent(s), siblings and any other person who affects the child's best interest.
d) The child's adjustment to home, school, community.
e) The mental and physical health of all persons involved.
f) The person more likely to honor parenting time and companionship.
g) Whether each parent has complied with child support.
h) Whether either parent has been involved in the adjudication of a child as abused, neglected or dependent or been convicted of crimes involving the child.
i) Whether the residential parent has continuously denied the other parent parenting time.
j) Whether either parent/person has established or intends to establish a residence out of state.

NOTE: Some courts have also used the best interest factors enumerated under R.C. 2151.414(D) in consideration of the child's best interest:

1. The child's interaction or interrelationship with parents, extended relatives, siblings and others.
2. The child's custodial history.
3. The child's wishes and
4. The opportunity for the child to achieve permanency through some other dispositional option or placement.

□ Legal custody is considered a permanent disposition.

NOTE: After legal custody is granted to a relative or other person, the parent could later file for custody of the child. However, legal custody orders cannot be changed absent a showing that there has been a change in the circumstances of the child's legal custodian or the child. (For the purposes of modifying a legal custody order, it doesn't matter what changes a parent makes in his/her life.)

Along with a change in circumstances, to change an order of legal custody there must also be a showing that the change in legal custody must be in the child's best interest.

MOTIONS FOR PLANNED PERMANENT LIVING ARRANGEMENT

□ Standard of Proof: Clear and convincing.

□ Rules of Evidence: Relaxed.

□ Agency must prove:

- The child, because of physical, mental or psychological needs, is unable to function in a family like setting and must remain in residential care.
- The parent(s) have significant physical, mental or psychological problems and are unable to care for the child, adoption is not in the child's best interest and there remains a significant and positive relationship between the parent and child.
- The child is unwilling to accept or adapt to permanent placement.

NOTE: PPLA does not apply in any case in which the child is under the age of 16.

MOTIONS FOR PERMANENT CUSTODY

□ Standard of Proof: Clear and convincing.

□ Rules of Evidence: Strictly applied.

□ Agency must prove:

- PC is in the child's best interest as outlined in R.C. 2151.414(D).

  AND

- It must first be proven that the child cannot and should not be reunified within a reasonable period under any one of the 16 enumerated factors of R.C. 2151.414(E).

  NOTE: Under these circumstances if proven, a grant of permanent custody is mandatory. (R.C. 2151.414(B)(2))

  OR

It can also be proven that the child is not abandoned or orphaned and has not been in the custody of a children services agency for 12 out of the last 22 (consecutive) months in this state or another state and the child cannot and should not return to the custody of a parent. (R.C. 2151.414(B)(1)(a))

- The child is abandoned. (R.C. 2151.414(B)(1)(b))
- The child is orphaned and there are no appropriate relatives available to able to take custody of the child. (R.C. 2151.414(B)(1)(c))

- The child has been in the temporary custody of a children services agency, in this state or another, for 12 out of the last 22 (consecutive) months. (R.C. 2151.414(B)(1)(d))
- The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state. (R.C. 2151.414(B)(1)(e))

  NOTE: For the purposes of calculating the 12 out of 22 months provision, the child is deemed to have entered the temporary custody of the agency on the earlier of the date the child is adjudicated or 60 days after the date of removal, whichever comes first.

  In the above circumstances of R.C. 2151.414(B)(1), the grant of PC is not mandatory, but discretionary based on clear and convincing evidence.

Any of the above motions can be filed at the first annual review, at the first semi-annual review (18-month mark) or at the second semi-annual review (2 years) and should be treated as if an original dispositional request.

OTHER TYPES OF HEARINGS

CASE PLAN REVIEWS

□ Standard of Proof: Preponderance of the evidence/best interest.

□ Rules of Evidence: Relaxed.

□ Children services is required to file a case plan with the court prior to the child's adjudicatory hearing, but no later than 30 days after the complaint was filed or the child was first placed in shelter care, whichever comes first. (R.C. 2151.412(D))

□ The agency is required to attempt to obtain an agreement from the parties as to the contents of the case plan. If all parties are in agreement, the court is mandated to journalize the case plan as part of the dispositional order. If the parties do not agree on the contents of the case plan, all parties are required to present evidence on the case plan at the dispositional hearing. The court is then required to determine what aspects of the case plan are in the child's best interest and journalize the case plan as part of the court's dispositional order. (R.C. 2151.412(E))

□ All parties are bound by the terms of the case plan and can be held in contempt for failure to comply with its terms.

□ Any party can propose a change to a substantive part of a case plan. If a party does so, they must, pursuant to R.C. 2151.412(F)(1) -(2):

- File the proposed change with the court.
- Give notice of the proposed change in writing to all parties including the guardian ad litem before the end of the day after the day of filing.
- Object within seven days to the proposed change and request a hearing on the proposed change.
- If an objection and request for hearing is received, the court must schedule a hearing no later than 30 days after the objection/request for hearing is received and provide notice of the hearing to all parties.
  NOTE: The agency CANNOT implement the change unless and until the court approves the proposed change.
- If there is no timely objection or request for hearing, the court may approve the case plan amendment without a hearing. The case plan amendment must be journalized 14 days after the change is filed with the court. If the court doesn't approve the change, even if no party objects, the court must schedule a hearing and notify the parties of the date/time.
- If there is no objection or hearing and the court does not journalize its approval of the case plan amendment, the agency may implement the change 15 days after filing.

EMERGENCY CASE PLAN AMENDMENTS R.C. 2151.412(F)(3)

□ The agency may implement a change to the case plan without prior agreement of the parties and without a hearing if the agency has reasonable cause to believe that:

- The child is suffering from illness or injury and is not receiving proper care and an appropriate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm OR
- The child is in immediate danger from the child's surroundings and an immediate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm unless the agency makes an appropriate change to the child's case plan.

□ The agency must provide notice of the change to the court and all parties before the end of the next business day after implementing the change AND

- File a statement with the court before the end of the third business day after implementing the change to the case plan and provide notice to all parties and the guardian ad litem.

□ The parties have 10 days from the date notice is provided to object and request a hearing.

□ If an objection and request for hearing is received, the court must schedule a hearing within 30 days and provide notice of the date/time of the hearing to all parties.

□ If there is no timely objection/request for hearing the court may approve the change without a hearing and journalize the emergency case plan amendment within 14 days OR

□ Schedule a hearing to be held no later than 30 days after the expiration of the 14-day period if the court doesn't approve of the change. Notice must be provided to all parties of the date/time of the hearing.

QUALIFIED RESIDENTIAL TREATMENT PROGRAM (QRTP) PLACEMENT REVIEW

□ There are special hearings that the court must hold when the agency wishes to place the child in a qualified residential treatment facility (QRTP).[1]

□ For any youth being recommended to or placed in a QRTP, an assessment by a qualified individual must be conducted within 30 days of the child's placement.

- The level of care assessment does not recommend a specific placement.
- The assessment must be submitted to the court prior to the hearing.
- The hearing must be held within 60 days of the placement in a QRTP to approve
- or disapprove the QRTP placement.
- Following this hearing, the court should also perform review and permanency hearings.

NOTE: A Qualified Residential Treatment Program is a program that:

1. Has a trauma-informed treatment model designed to meet the needs (including clinical needs) of children with serious emotional or behavioral disturbances and is able to treat the child.
2. Has registered or licensed nursing or clinical staff who can provide the necessary care and are on-site as required by the trauma-informed treatment model and available 24 hours a day, seven days a week.
3. Is licensed by the Ohio Department of Job and Family Services and accredited by:
    a. Commission on Accreditation of Rehabilitation Facilities.
    b. Joint Commission on Accreditation of Healthcare Organizations.
    c. Council on Accreditation.
    d. Any other independent, not-for-profit accrediting organization approved by the U.S. Secretary of Health and Human Services.

□ Standard of Proof: Preponderance of the evidence/best interest.

□ Within 60 days of the placement in the QRTP, the juvenile court is required to:

1. Consider the qualified individual's assessment, determination and documentation.
2. Determine whether the needs of the child can be met through placement in a foster family home. If not, whether placement in the QRTP provides the most effective and appropriate level of care in the least restrictive environment and whether that placement is consistent with the child's short- and long-term goals as stated in the permanency plan.
3. And approve or disapprove the placement. (42 U.S.C. 675a(c)(2))

[1] The Supreme Court of Ohio, *Qualified Residential Treatment Program (QRTP) Level of Care Assessments Toolkit*, https://www.supremecourt.ohio.gov/JCS/CFC/resources/QRTPToolkit.pdf (accessed September 29, 2021).

□ At every review and permanency hearing in order to approve a QRTP placement, the court shall find by a preponderance of the evidence:

1. That an ongoing assessment conducted by a qualified individual shows:
    a. The needs of the child cannot be met through placement in a foster family home.
    b. Placement in the QRTP provides the most effective and appropriate level of care in the least restrictive environment.
    c. And that the placement is consistent with the child's short- and long-term goals as stated in the permanency plan.
2. That the specific treatment/services the child requires and the length of time for the stated treatment are documented in the case plan.
3. The state's efforts to prepare the child to return home or to be placed with a relative, guardian or custodian are documented in the case plan.